

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

No. _____

SANTA FE REPORTER NEWSPAPER,

Plaintiff,

v.

GOVERNOR SUSANA MARTINEZ,

Defendant.

**COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES FOR VIOLATIONS OF
THE NEW MEXICO INSPECTION OF PUBLIC RECORDS ACT AND
THE NEW MEXICO CONSTITUTION'S GUARANTEE OF A FREE PRESS**

I. INTRODUCTION

1. Government transparency is essential to a free and informed electorate and is a critical safeguard against government deception and abuse of power. The instant case concerns Defendant Governor Susana Martinez's unlawful selective withholding of public information and retaliatory and discriminatory conduct towards the SF Reporter. The purpose of this lawsuit is to increase government transparency through enforcement of the New Mexico Inspection of Public Records Act ("IPRA"), NMSA 1978, §§ 14-2-1, *et seq.*, and to ensure that members of the press are given equal access to public information and documents as required by the New Mexico Constitution's Freedom of the Press provision ("Free Press Provision"), N.M. Const. Art. II, Sec. 17. The purpose of both laws is to

ensure vital public and press access to information about the operation and function of government. As Thomas Jefferson put it, "Our liberty depends upon the freedom of the press, and that cannot be limited without being lost."

2. Plaintiff contends that Defendant Governor Susana Martinez routinely violated IPRA by unlawfully withholding public documents responsive to Plaintiff's public information requests, unreasonably delaying the production of responsive documents, and withholding responsive documents pursuant to improperly asserted privileges. In addition, Defendant Governor Susana Martinez further damaged the public's access to information by unlawfully discriminating and retaliating against Plaintiff in violation of Plaintiff's rights under the NM Constitution's Free Press Provision.

3. Plaintiff Santa Fe Reporter Newspaper ("SF Reporter") is a New Mexico corporation with its primary place of business in Santa Fe, New Mexico. The SF Reporter is an award-winning free weekly newspaper serving Santa Fe, Albuquerque, and Northern New Mexico communities for over 39 years. The SF Reporter has approximately 60,000 print readers each week and an average online readership of 26,000 per month. In recent years, the SF Reporter has won awards for investigative reporting, feature stories, innovation and public service. In August 2013, the SF Reporter was awarded the New Mexico Foundation for Open Government's prestigious William Dixon Award for courageous and effective journalism that furthers principles of open government.

4. Defendant Governor Susana Martinez ("Governor Martinez") is the Governor of New Mexico and is a resident of Santa Fe, New Mexico. She is sued in her capacity as the Chief Executive Officer of the State of New Mexico.

5. Venue is proper in the County of Santa Fe.

II. BACKGROUND

6. The public policy of IPRA is that “all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees.” NMSA 1978 §14-2-5. Public records are defined as consisting of “all documents ... and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business.” NMSA 1978, §14-2-6(F).

7. Under IPRA, a records custodian must respond to a written IPRA request immediately and, if inspection of the requested records cannot occur within 3 days, the custodian must explain in writing when the records will be available. NMSA 1978, §14-2-8(D). Inspection of most requested records must occur within 15 days of receiving the request. *Id.* Only in those circumstances when a request is excessively burdensome or broad, may a public body take an additional reasonable period of time necessary to produce the requested documents. NMSA 1978, §14-2-10. As a practical matter, in order to comply with these statutory requirements a public body such as the Governor’s Office must have procedures in place to promptly locate and produce the requested public records in a timely fashion.

8. In her election campaign Governor Martinez promised that if she were elected she would ensure that the government would be operated with transparency, openness, and in compliance with the State’s open government laws. In its coverage of the Governor, Plaintiff SF Reporter has tried to be fair, unbiased and balanced. Plaintiff has also been thorough and honest in monitoring, probing and reporting about Defendant Governor’s track record of compliance with New Mexico’s open government laws and the Governor’s

own promise of transparency.

9. Despite IPRA's statutory requirements and the Governor's own campaign pledge of transparency, Defendant Governor Martinez failed to put into place a reasonable process to comply with the law and, as described below, repeatedly violated Plaintiff's rights under IPRA by withholding and delaying production of public documents responsive to Plaintiff SF Reporter's IPRA requests. All of Plaintiff's IPRA requests discussed in this Complaint were for the purpose of obtaining public information about the operation of government that could then be reported to the public through SF Reporter's news articles.

10. Not only has Governor Martinez violated IPRA's clear mandates, she has withheld access to public information for an illegal motive – in order to punish the SF Reporter for publishing articles about the conduct of the Governor and members of her administration that did not always cast her in a positive light. During 2012, the SF Reporter repeatedly reported on practices by the Governor and her administration that raised questions about transparency in her administration. In December 2012, the SF Reporter summed up these prior articles in an end-of-year piece entitled, "The Year in Closed Government." In part, this article focused on the extensive practice within the Martinez administration of conducting public business using private e-mail accounts, as revealed through many emails produced by the Attorney General in response to an IPRA request from Plaintiff. The unlawful attitude in the Governor's Office was summed up by the Governor's Chief of Staff. As reported by Plaintiff in an article on September 11, 2012, Governor Martinez's Chief of Staff Keith Gardner stated in an in-person conversation recorded by a third party, "I never email on my state email anything that can come back to bite me in the ass. ... It's all done off-line. I never – shit, I never use my state email,

because - it is all done on different stuff, 'cause I don't want to go to court or jail."

11. While Defendant already had a pattern and practice of failing to adequately respond to Plaintiff's IPRA requests, as a result of the publication of the "Closed Government" article, the SF Reporter's editorial position in that issue criticizing the Governor for her lack of transparency, and prior articles that did not cast the Governor's Office in a favorable light, Defendant engaged in a campaign of retaliation against the SF Reporter by consistently denying Plaintiff access to public information given to other news organizations and refusing to communicate with Plaintiff while responding to inquiries from other news organizations. This unlawful retaliation, undertaken because Plaintiff published articles that did not cast Governor Martinez and her administration in a favorable light, amounted to viewpoint discrimination in violation of Plaintiff's rights under the NM Constitution's Free Press Provision.

12. The press must be free to report on public affairs and officials' conduct without reprisal. A free press and public access to information are undermined if the access of members of the press to facts relating to public business is limited because they present a certain viewpoint or perspective that the Governor does not like. Defendant may not attempt to regulate or discriminate against SF Reporter's news reporting or editorials based on the substantive content, perspective, or message they convey.

13. Here, Defendant unlawfully tried to influence the substantive press coverage that public issues would receive by selectively denying the SF Reporter access to information and documents in retaliation for the content and tone of Plaintiff's articles and editorials about conduct in the Governor's office. Defendant selectively denied the SF Reporter's extensive and varied readership access to public information crucial to their

understanding of how they are being governed. This constituted retaliatory viewpoint discrimination in violation of the NM Constitution's Free Press Provision.

14. This unlawful viewpoint discrimination had the same pernicious effect as an unlawful prior restraint. By limiting Plaintiff's access to information, the Governor necessarily limited the content of the news Plaintiff could publish. Limiting this content was the Governor's way of trying to control what the SF Reporter published about her administration, in violation of the NM Constitution's Free Press Provision. When the government with its substantial power exercises an unchecked discretion to determine what public information to make available to the press as a whole or to particular members of the press, it has the power to distort the information available to the public and hide the truth. Ultimately, the consequence of this type of prior restraint of the press, or censorship, is the public's ignorance of public affairs imposed by Defendant's selective withholding of information. As United States District Judge Murray Gurfein wrote in 1971 when he rejected the government's attempt to stop the publication of the Pentagon Papers: "The security of the Nation is not at the ramparts alone. Security also lies in the value of our free institutions. A cantankerous press, an obstinate press, an ubiquitous press, must be suffered by those in authority in order to preserve the even greater values of freedom of expression and the right of the people to know."

III. FACTS RELATED TO IPRA VIOLATIONS

First IPRA Violation: Withholding Clearly Public Documents

15. On June 20, 2012, the SF Reporter submitted an IPRA request to Defendant for "[a]ll emails sent from and received by keithgardner@susanapac.com,

sdarnell@susanapac.com, rmkcang@yahoo.com, gardners90@yahoo.com and Gov. Susana Martinez' Susana PAC email address from the following dates: August 17, 2011; May 2, 2012; and June 13, 2012" (hereinafter "IPRA request 12-048"). The SF Reporter made this IPRA request in the course of investigating political activity by personnel in the Governor's office, the Governor's reaction to the imprisonment of Sarah Palin's hacker on June 12, 2012, and activity by the Governor's office concerning an inmate's escape from prison on August 13, 2011.

16. In response to IPRA request 12-048, after 55 days of delays, Defendant produced one email to Scott Darnell, dated June 13, 2012. This email concerned a request to interview Governor Martinez. Defendant claimed that this email was the only document responsive to IPRA request 12-048. But Defendant failed to produce at least one email sent on May 2, 2012: a very significant email from Larry Behrens, Public Information Officer of the Public Education Department ("PED"), to Defendant's chief political consultant Jay McCleskey, the Governor's Chief of Staff Keith Gardner, her Director of Communications Scott Darnell, Secretary-Designate of Education Hanna Skandera, and PED chief of Staff Christine Stavem. This email was forwarded to Governor Martinez at susana@susana2010.com by Ms. Stavem on that same day. See Behrens Email, attached as Exhibit 1. The subject of the withheld email was a detailed description of how Mr. Behrens used public resources to create a list of non-union teachers for the Governor's election campaign. This email was later found by the New Mexico Attorney General to be a public document subject to disclosure under IPRA.

Second IPRA Violation: Withholding Clearly Public Documents

17. On February 26, 2013, the SF Reporter submitted an IPRA request to

Defendant for “[a]ll emails concerning public business sent to or from Keith Gardner’s Gmail account, kjgatc@gmail.com, on October 15, 2011” (hereinafter “IPRA request 13-013”). The SF Reporter made this IPRA request in the course of reporting on the State’s compliance monitoring and enforcement of the state’s gaming laws.

18. On March 13, 2013, Defendant informed Plaintiff concerning IPRA request 13-013 that “[t]he Office of the Governor does not have any responsive documents to your request.” But Defendant failed to produce at least three emails from October 15: three significant emails to and from Mr. Gardner’s Gmail account concerning changing a meeting between the Governor’s Chief of Staff and executives from Scientific Games International, Inc. (which has a contract with the New Mexico Gaming Control Board to monitor non-tribal gaming machines) to a more private, less public, location. See Gardner Email chain, attached as Exhibit 2. The New Mexico Court of Appeals has ruled that email concerning public business is a public record that must be produced under IPRA. The New Mexico Attorney General has further ruled that email about public business that is created and sent on a public employee’s private email account is a public record that must be produced under IPRA.

Third IPRA Violation: Withholding Clearly Public Documents

19. On June 6, 2013, the SF Reporter submitted an IPRA request to Defendant for “all written communications between members of the Governor’s office and state Sen. Mark Moores, R-Bernalillo, regarding the state Senate’s Rules Committee confirmation hearings on Education Secretary-Designate Hanna Skandera during the 2013 legislative session” (hereinafter “IPRA request 13-023”). The SF Reporter made this IPRA request in the course of reporting on the Governor’s office activities concerning the legislative

consideration of Hanna Skandera as Secretary of Education.

20. On July 1, 2013, Defendant informed Plaintiff concerning IPRA request 13-023 that “[t]he Office of the Governor does not have any responsive documents to your request.” But Defendant failed to produce at least three emails between Senator Moores and the Governor’s Office. See Moores Emails, attached as Exhibit 3. Two of the emails were between Senator Moores and the Governor’s Policy Director Janel Anderson. These emails clearly showed the Governor’s office working closely with Senator Moores to draft a lengthy objection to the Senate Rules Committee’s decision to permit a witness to testify in opposition to the Governor’s nomination of Ms. Skandera as Secretary of the Public Education Department.

Fourth IPRA Violation: Inadequate Search for Responsive Documents

21. On May 13, 2013, the SF Reporter submitted an IPRA request to Defendant for “all written communications sent by Pamela Cason—the records custodian at the Governor’s Office—or sent to Pamela Cason regarding Inspection of Public Records Act requests submitted by the *Santa Fe Reporter*. The request span should be the time period from May 1, 2012 to the date the request is met” (hereinafter “IPRA request 13-025”).

22. On August 9, 2013, after an 87-day delay, Defendant produced 274 pages of emails to and from Pamela Cason regarding SF Reporter IPRA requests. These documents reveal that Ms. Cason forwards IPRA requests either to specific individual members of the Governor’s administration and/or to an email list-serve for all current members of the Governor’s staff with the following instructions: “Please read the request below and bring me any documents that are responsive that you have.” Ms. Cason followed this procedure even when the IPRA request, as in the case of IPRA 12-048

discussed above, sought communications from a limited number of specified email accounts.

23. This procedure and the documents produced in response to this request reveal several very important deficiencies in the Governor's process for responding to IPRA requests, including those made by Plaintiff. First, Defendant has no policy or procedure concerning the search and production requirements that must be followed for those individuals receiving forwarded IPRA requests before they are allowed to certify that they have no responsive documents.

24. Second, the Governor's office does not conduct an adequate follow up to forwarded IPRA requests. Ms. Cason's emails reveal that many members of the Governor's staff and administration simply do not respond to forwarded IPRA requests at all. For others, their only responses to Ms. Cason's emails are statements that they have no responsive documents, or as one individual stated in her response: "I don't think I have anything." Defendant's policy and practice of failing to follow up on forwarded IPRA requests is unreasonable and unlawful.

25. Third, Defendant has no policy or procedure concerning any requirements for the maintenance and search of email accounts of individuals who were working during the time period covered by a request, but who no longer work in the Governor's office, are on vacation, or are otherwise unavailable to respond to a forwarded IPRA request. Defendant's lack of adequate policies and procedures regarding the processing of forwarded IPRA requests, as well as, the maintenance and search of email accounts belonging to absent individuals is unreasonable and unlawful.

26. In sum, the practice by the Governor of simply forwarding IPRA requests to

members of the Governor's staff and administration fails to result in reasonable searches for responsive documents and communications to and from specifically identified email accounts.

27. The inadequacy of the Governor's search process is demonstrated by the facts concerning the failure to produce public documents described above and by the Governor's response to the IPRA request submitted by the SF Reporter on June 6, 2013. The request was to Defendant for "all communications of members of the Office of the Governor – including Gov. Martinez – regarding media requests or questions by the Santa Fe Reporter between Jan. 1, 2013 to the date the request is met" (hereinafter "IPRA request 13-029"). The SF Reporter made this IPRA request in an attempt to determine the procedures by which the Governor's office responds to press/media information requests and, specifically, those made by Plaintiff SF Reporter.

28. On June 28, 2013, despite the many documented "media requests or questions" made by the SF Reporter since Jan. 1, 2013, Defendant produced only three emails: 1) an email dated February 20, 2013, to the SF Reporter from the Governor's spokesman; 2) an email chain forwarding a letter from the N.M. Attorney General concerning an IPRA complaint submitted by the SF Reporter to several members of the Governor's Office; and 3) an email from the SF Reporter requesting comment on an article concerning Defendant's policy and practice of conducting public business on private email accounts. This response demonstrates that Defendant does not pass along the media requests or questions made by the SF Reporter and that the process followed in response to the IPRA request failed to turn up the various documents that are in Defendant's possession.

Fifth IPRA Violation: Delay in Responding to Plaintiff's IPRA Requests

29. Pursuant to NMSA 1978, §14-2-8(D), a records custodian must permit inspection of the requested public records "immediately or as soon as practicable" and no later than fifteen days after receiving the written IPRA request. Defendant has a pattern and practice of unreasonably delaying responding to the SF Reporter's IPRA requests.

30. On April 25, 2013, the SF Reporter submitted an IPRA request to Defendant for "the names, positions and salaries of everyone currently employed in Governor Susana Martinez' office." The SF Reporter made this IPRA request to obtain information from a source other than the "Sunshine Portal," the official portal for New Mexico state government located at <http://sunshineportalnm.com/>, in an attempt to determine whether the information contained on the Sunshine Portal was complete, current and accurate.

31. After a 20 day delay, Defendant responded to the April 25, 2013 IPRA request by instructing the SF Reporter to check the "Sunshine Portal." Taking 20 days to inform Plaintiff to check the government website, rather than providing the requested information so the Sunshine Portal could be verified, was unreasonable, unlawful and unresponsive.

Sixth IPRA Violation: Delays in Responding to Plaintiff's IPRA Requests and Withholding Clearly Public Documents

32. On December 19, 2011, the SF Reporter submitted an IPRA request to Defendant for "[t]he 2011 daily calendar of events, meetings and appointments for Gov. Susana Martinez" (hereinafter "IPRA request 11-013"). The SF Reporter made this IPRA request in an attempt to determine how the Governor spends her time and schedules her days. After 63 days of delays, Defendant failed to produce the requested listing of all

events, public and private appearances and appointments, but instead, produced a copy of the Governor's 2011 public appearances, which are listed under archived public appearances on the Governor's website at www.governor.state.nm.us.

33. Pursuant to the administrative rules governing the time frame for retention of historical records under the Public Records Act (NMSA 1978, §14-3-1, *et seq.*), records of the Governor's scheduled appointments, including "appointment books; daily, weekly, and monthly calendars; and back up materials" must be permanently maintained. See N. M. Admin. Code 1.18.356.15. Defendant unreasonably delayed its response to IPRA request 11-013 and unreasonably narrowed the scope of the request by failing to provide documents showing the Governor's "daily calendar of events, meetings and appointments." Defendant gave no explanation for her narrowing of the request or her taking over two months to produce copies of a limited response: Defendant's already public calendar of public appearances. The delay and limited document production were unreasonable and unlawful.

34. On June 6, 2013, the SF Reporter submitted an IPRA request to Defendant for "all records including appointment books; daily, weekly, and monthly calendars and back up materials which record the full schedule of appointments, including, but not be limited to, all official meetings, public appearances, personal meetings and appointments, and travel for Governor Susana Martinez from January 1, 2012 through December 31, 2012" (hereinafter "IPRA request 13-040"). The SF Reporter made this IPRA request in a second attempt to determine how the Governor spends her time and schedules her days.

35. After 73 days of delay, on August 23, 2013, Defendant responded to IPRA request 13-040 by once again delaying production of these undisputedly public records.

This time, Defendant stated it needed until September 6, 2013, a total of 87 days, to respond to Plaintiff's IPRA request.

Seventh IPRA Violation: Unlawful Assertion of Privileges to Withhold Clearly Public Documents

36. On December 14, 2012, the SF Reporter submitted an IPRA request to Defendant for "all pardon requests made to Gov. Susana Martinez' Office made in 2012 [and] all documents relating to denial or acceptance of pardons held by the governor's office in the year 2012." The SF Reporter made this IPRA request in an attempt to gather data concerning the types of crimes and sentences for which pardon requests had been made and whether Governor Martinez had granted or denied each one.

37. In response to the December 14, 2012, IPRA request ("IPRA request 12-091") on January 25, 2013, after a 41-day delay, Defendant produced 98 pages of form letters rejecting or, in a few cases, granting pardons. The Governor did not produce any other documents. The form letters that were produced contained no information about the crime for which a pardon had been requested or the sentence served. The Office of the Governor stated in its response that the Governor generally "receives in connection with each pardon request an (i) executive clemency report and recommendation from the Parole Board; (ii) a pardon application detailing the applicant's personal history; and (iii) letters from victims and/or interested parties." The Office of the Governor asserted that because all these documents were privileged, pursuant either to a Parole Board privilege or the Governor's executive privilege, they would not be produced.

38. The Governor's office under previous Governors has permitted reporters to inspect precisely the type of pardon records sought by IPRA request 12-091. In 2010, then

Governor-elect Martinez asserted, through her spokesman Danny Diaz, that “the public, and victims in particular, have a right to know if convicted criminals are seeking pardons. Unless precluded by law, the Martinez administration intends to release any and all documents related to pardon requests.”

39. Nothing in current law precludes the release of the documents sought by Plaintiff. Nothing in the Probation and Parole Act, invoked by the Governor requires non-disclosure of all the documents requested. That Act’s confidentiality provision states only that, “[a]ll social records, including pre-sentence reports, pre-parole reports and supervision histories, obtained by the [Parole Board] are privileged and shall not be disclosed.” NMSA 1978, §31-21-6. The requested pardon documents are not protected social records and should have been produced.

40. Similarly, while some of the requested records may be subject to executive privilege, records showing the crime for which the pardon requestor had been convicted and the sentence are not communications to or from the Governor made for the sole purpose of fostering informed and sound gubernatorial decision-making. Moreover, Defendant failed to go through each of the documents requested by Plaintiff, as required both by IPRA and the law concerning executive privilege, to determine which materials were subject to executive privilege so she could release the ones that were not communications to or from the Governor made for the sole purpose of fostering informed and sound gubernatorial decision-making. Instead, Defendant broadly asserted that the pardon requests and all other documents relating to them were protected by executive privilege. Finally, the Governor denied Plaintiff’s request in direct contravention of the

policy she announced in 2010. Nothing in the law required her to make a blanket assertion of executive privilege.

41. As described above in this Complaint, Defendant has intentionally or with deliberate indifference repeatedly withheld public documents responsive to the SF Reporter's several IPRA requests. In addition, Defendant has repeatedly failed to conduct an adequate search for responsive documents, unreasonably delayed production of responsive documents, applied an unlawfully narrow definition of "public record" in its search for responsive documents, and/or routinely deleted or otherwise failed to retain public records contained in e-mails or text messages. Defendant has repeatedly violated Plaintiff's rights under IPRA to avoid disclosure of potentially embarrassing or politically damaging public documents and/or to retaliate against Plaintiff for publishing articles and editorials she did not like.

IV. FACTS RELATED TO VIOLATIONS OF RIGHTS UNDER THE FREE PRESS PROVISION OF THE NEW MEXICO CONSTITUTION

42. During 2012, the SF Reporter published several articles that raised questions about the lack of transparency of Governor Martinez and her administration. These articles culminated in "The Year in Closed Government" article published on December 18, 2012, that brought to light the extensive practice within the Martinez administration of unlawfully conducting public business using private e-mail accounts in order to avoid public scrutiny of public business. The December 18, 2012, issue also contained editorial content criticizing the Governor's lack of transparency.

43. During the seven months after the publication of the "The Year in Closed Government" article, Defendant has discriminated against Plaintiff by refusing to

communicate with Plaintiff and has acted to impair its news gathering, while providing information to other news organizations on the same subjects as those on which the SF Reporter was reporting. For example, from January through June 2013, Defendant refused to communicate with Plaintiff about, respond to questions about, or comment on the following SF Reporter stories:

- 1) "Secrecy of State," published on February 26, 2013, reporting on Defendant's policy and practice of conducting public business on private email accounts. This article also discussed Defendant's policy and practice of failing to produce public records contained in private email accounts;
- 2) "Pardon Me," published on March 5, 2013, reporting on Defendant's denial of pardon requests;
- 3) "Two Susanas," published on March 19, 2013, reporting on Defendant's efforts to repeal the New Mexico law that permits undocumented immigrants to obtain driver's licenses, while simultaneously claiming to support bringing undocumented immigrants into the legal system;
- 4) "Testing Out," published on April 30, 2013, reporting on the privatization of high school equivalency exams and Defendant's pocket veto of a bill that would have changed the term used for GEDs, so that the State of New Mexico would not be bound to use the one company that has trade-marked the term "GED";
- 5) "Cog in the Machine," published on May 21, 2013, reporting on Defendant's efforts to erode the authority and independence of the New Mexico Finance Authority;

- 6) "Balloon Payments," published on June 11, 2013, reporting on the high per diem payments made to three Department of Health employees, despite Defendant's promises to cut waste and shrink the size of local government;
- 7) "Scandal!," published on June 18, 2013, as a follow up article concerning Defendant's policy and practice of conducting public business on private email accounts and consistently failing to produce public records contained in private email accounts;
- 8) "Alligator Hunting," published on June 25, 2013, reporting on Defendant's refusal to produce public records concerning how much the citizens of New Mexico were billed for her husband's six-day trip through Texas, Louisiana and Mississippi; and
- 9) "Insider's Game," published on August 22, 2013, which continued the investigation begun in "Cog in the Machine" about problems with the New Mexico Finance Authority.

44. In contrast to the Governor's treatment of Plaintiff, Defendant's spokesman regularly responds to inquires from other news organizations. For example, when the Governor's office refused to return repeated phone calls and emails from the SF Reporter concerning the leaked emails that revealed Defendant's practice of conducting public business on private email accounts, Defendant's spokesman responded to inquiries from other newspapers concerning the same emails. The same was true for the articles about the New Mexico Finance Authority and other articles described in paragraph 41 above.

45. During the first seven months of 2013, Defendant, through the Governor's appointed spokesman Enrique Knell, refused to return any phone calls from the SF

Reporter and all but one email requesting information or comment. The only email response the SF Reporter received from Mr. Knell during the entire period was an email containing two website links. In contrast, during this time period, Mr. Knell and others in the Governor's Office regularly provided information to and responded to questions from the Albuquerque Journal and other news organizations.

46. On June 6, 2013, the SF Reporter contacted Governor Martinez directly on her cellular telephone. Instead of answering Plaintiff's questions about a news story, Defendant directed Plaintiff's investigative journalist to contact Mr. Knell for any comments or information. When the journalist informed Defendant that Mr. Knell did not respond to inquiries from the SF Reporter, Defendant sarcastically responded, "I wonder why."

47. At all times material hereto, Defendant acted intentionally, willfully, with deliberate indifference, with reckless indifference and/or with malice toward the rights of Plaintiff.

COUNT ONE IPRA VIOLATIONS

48. As set forth above in this Complaint, Defendant Governor Martinez violated and continues to violate Plaintiff's rights under NMSA 1978, § 14-2-8 by unlawfully withholding public documents responsive to Plaintiff's IPRA requests. Defendant unlawfully withheld public documents by failing to conduct an adequate search for responsive documents, applying an unlawfully narrow definition of "public record" in its search for responsive documents, and/or routinely deleting or otherwise failing to retain public records contained in e-mails or text messages.

49. Defendant Governor Martinez violated and continues to violate Plaintiff's rights under NMSA 1978, §§ 14-2-8 and 14-2-10 by unreasonably delaying the production of documents responsive to Plaintiff's IPRA requests.

50. Defendant Governor Martinez violated and continues to violate Plaintiff's rights under NMSA 1978, §§ 14-2-8 and 14-2-11 by unreasonably withholding documents responsive to Plaintiff's IPRA requests on the basis of improperly asserted privileges.

51. As a direct and proximate result of the conduct of Defendants, Plaintiff suffered and continues to suffer the violation of its statutory rights.

52. Plaintiff is suffering and will continue to suffer immediate and irreparable harm, unless this Court issues a preliminary and permanent injunction requiring Defendant Governor and her office to develop and implement policies and procedures sufficient to ensure that when an IPRA request for documents is received, the Office of the Governor will conduct a prompt and thorough search and then promptly produce all public documents that are required to be produced in response to the request, including but not limited to those that are held in public and private email accounts and in the files of all current and former employees even if they are not at work when the request is made. Plaintiff has no adequate remedy at law.

COUNT TWO

VIOLATIONS OF THE FREE PRESS PROTECTION OF THE NM CONSTITUTION

53. As set forth above in this Complaint, Defendant engaged and continues to engage in a campaign of retaliation and impermissible viewpoint discrimination against the SF Reporter.

54. Defendant consistently denied and continues to deny Plaintiff access to public information and refused to communicate with Plaintiff while responding to inquiries from other news agencies. Defendant impaired and continues to impair Plaintiff's news-gathering activities, while granting preferential access to news agencies which published articles perceived as more favorable to Governor Martinez and her administration.

55. Such actions and/or omissions by Defendant constitute unlawful retaliation against Plaintiff for the publication of articles that did not cast Governor Martinez and her administration in a favorable light, a prior restraint of Plaintiff's freedom to publish the news, censorship, and viewpoint discrimination in violation of the Free Press Provision of the New Mexico Constitution.

56. As a direct and proximate result of the conduct of Defendant, Plaintiff suffered and continues to suffer the violation of its rights under the Free Press Provision of the New Mexico State Constitution, N.M. Const. Art. II Sec. 17.

57. Plaintiff is suffering and will continue to suffer immediate and irreparable harm, unless this Court issues a preliminary and permanent injunction requiring the Governor and her Office to immediately cease and desist from discriminating and retaliating against Plaintiff SF Reporter and provide Plaintiff the same access to information and comment as Defendant provides to other news organizations. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for the following relief:

1. Injunctive relief requiring Defendant Governor and her Office of the Governor to:

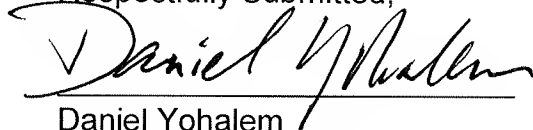
a) develop and implement policies and procedures sufficient to ensure that when an IPRA request for documents is received, the Office of the Governor will conduct a prompt and thorough search and then promptly produce all

public documents that are required to be produced in response to the request, including but not limited to those that are held in public and private email accounts and in the files of all current and former employees even if they are not at work when the request is made, and

b) immediately cease and desist from discriminating and retaliating against Plaintiff SF Reporter and provide Plaintiff the same access to information and comment as Defendant provides to other news organizations;

2. Damages in an amount allowed by IPRA as determined by the trier of fact;
3. Pre- and post-judgment interest;
4. Reasonable attorneys fees and costs pursuant to NMSA 1978, §14-2-12(D); and
5. Such other and further relief as the court deems just and proper.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Daniel Yohalem", written over a horizontal line.

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